

REMARKS

Based on the above amendments and following remarks, this application is deemed to be in condition for allowance and action to that end is respectfully requested.

Summary Of Amendments To Claims

Applicant has amended the claims to, among other things, particularly define the Applicant's invention. No new matter has been added. Applicant has also canceled claims 36-51, without prejudice.

Summary Of Amendments To Specification

Applicant has amended the specification to correct inadvertent typographical errors. No new matter has been added.

Response To Claim Rejections - 35 U.S.C. § 112

The Examiner rejected claims 44 and 48 under 35 U.S.C. § 112, first paragraph. Applicant has now canceled these claims without prejudice. Accordingly, Applicant respectfully submits that the Examiner's grounds for this rejection are now moot and withdrawal thereof is respectfully requested.

Response to Claim Objections

The Examiner objected to claims 42-43 and 50-51 due to certain informalities. Applicant has amended claims 42-43 to correct the informalities and has canceled claims

50-51 without prejudice. Accordingly, Applicant respectfully submits that the Examiner's objections to the claims have been overcome or are moot and withdrawal thereof is respectfully requested.

Response To Claim Rejections - 35 U.S.C. § 103

The Examiner rejected claims 28-51 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,916,568 to Smyth et al (Smyth) in view of EP 0 842 605 A1 to Petri (Petri).

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art references (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on an applicant's disclosure in the specification. See In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Applicant respectfully submits that Smyth in view of Petri (whether or not there is a proper suggestion to combine or modify), fail to teach or suggest, either expressly or inherently, all the limitations of the claims.

For example, Claim 28 recites, among other things, an aerosol spray apparatus, comprising a flash-dry disinfectant composition in aerosol form comprising 10 to 30% by

volume of an anti-microbial agent. One choice of an anti-microbial agent is hydrogen peroxide.

Regarding Smyth and in contrast to the claimed invention, Smyth does not disclose a flash-dry disinfectant composition in aerosol form comprising 10 to 30% by volume of an anti-microbial agent.

Smyth discloses a composition comprising 15-35% by weight of hydrogen peroxide solution as the anti-microbial agent of choice. Smyth's hydrogen peroxide solution further comprises at least 9% by weight of hydrogen peroxide. Applying the appropriate assumptions, calculations and conversions, Smyth's composition having 15-35% by weight of a hydrogen peroxide solution comprising at least 9% by weight of hydrogen peroxide is equal to a composition having about 1.35-3.15% by weight of hydrogen peroxide. Smyth further teaches, "the concentration of hydrogen peroxide is preferably about 2.7% by weight of the total composition." See Col. 2, lines 57-59.

Set forth below is a Conversion Table similar to the Conversion Table of Applicant's Amendment and Response dated September 19, 2003 showing that Applicant's claimed limitation of 10-30% by volume of hydrogen peroxide is equal to about 15- 43.11% by weight of hydrogen peroxide.

Conversion Table

Claim Elements	% vol.	Density at 20° C	% wt.
Antimicrobial Agent: -Hydrogen Peroxide (H ₂ O ₂)	10-30	1.45 g/ml	15-43.11

ASSUMPTIONS:

- * All numbers are rounded up to the second decimal place.
- * The lower limit of a component is calculated with the assumption that the higher density one of the other two components is present at highest possible amount.
- * The upper limit of a component is calculated with the assumption that the lower density one of the other two components is present at highest possible amount.

Clearly, Applicant's claimed range of about 15 - 43.11% by weight of hydrogen peroxide does not encompass Smyth's preferable concentration of 2.7% by weight of hydrogen peroxide and further falls outside of Smyth's range of about 1.35-3.15% by weight of hydrogen peroxide. Moreover, typical concentrations of prior art hydrogen peroxide solutions lie in the range of 3%-35% by weight of hydrogen peroxide. Thus, if one assumes that Smyth's composition has 15-35% by weight of a hydrogen peroxide solution comprising 9-35% by weight of hydrogen peroxide, then applying the appropriate assumptions, calculations and conversions, Smyth's composition is equal to a composition having about 1.35-12.5% by weight of hydrogen peroxide, which again falls outside of Applicant's claimed range of 15- 43.11% by weight of hydrogen peroxide.

Regarding Petri and in contrast to the claimed invention, Petri does not disclose an aerosol apparatus. Instead, Petri discloses a spray-type dispenser operated by a pumping mechanism. Nor does Petri disclose a flash-dry disinfectant composition in aerosol form providing rapid and effective disinfecting action. Instead, Petri teaches away from Applicant's claimed invention by providing for the addition of a thickener to the Petri composition to reduce vaporization and avoid inhalation of peroxide mist that may have formed when spraying onto a surface.

Therefore, based on the above remarks, Applicant respectfully submits that the claimed invention distinguishes and is unobvious over the applied prior art under 35 U.S.C. §103. Accordingly, Applicant submits that the grounds for the Examiner's rejections under 35 U.S.C. § 103(a) are overcome and withdrawal thereof is respectfully requested.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance and accordingly, allowance of the application is respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in formal respects in order to place the case in condition for final allowance, then it is respectfully requested that such amendment or correction be carried out by Examiner's Amendment and the case passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, the Examiner is invited to telephone the undersigned.

The Commissioner is authorized to charge any required fees, including any extension and/or excess claim fees, any additional fees, or credit any overpayment to Deposit Account 06-0923. Applicant claims small entity status. See 37 C.F.R. 1.27.

Respectfully submitted for Applicants,



Patrice A. King, Esq. (Reg. No. 44,833)
Richard I. Samuel, Esq. (Reg. No. 24,435)
GOODWIN PROCTER LLP
7 Becker Farm Road
Roseland, New Jersey 07068
973 992 1990